THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

WRIT PETITION No.12532 OF 2005

DATE: 31-10-2005

Between:

M/s. Sri Roopa Pharma
Rep. by its Proprietor Y. Bala Subba Rao
S/o. Chenchu subbaiah, aged about 45 years,
1/33/25, Tatakulavari Street,
Vijayawada.

... PETITIONER

AND

The Commercial Tax Officer,
Kothapeta Circle, Vijayawada,
and two others **... RESPONDENTS**

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE S. ANANDA REDDY

WRIT PETITION No.12532 OF 2005

ORDER:(Per Hon'ble Mr. Justice S. Ananda Reddy)

This writ petition is filed by the petitioner praying to issue Writ of *Mandamus* to declare the action of the
Commercial Tax Officer, Kothapeta Circle, Vijayawada, in obtaining the letter, dated 24-05-2004, from the petitioner and simultaneously issuing a notice and proceedings on the very same day and collecting an amount of Rs.56,048/- towards tax and an amount of Rs.1,12,096/- towards compounding fee, as illegal, arbitrary and without jurisdiction, as there was no order of assessment by the date of the said collection, and consequently sought for a direction for refund of the said amounts holding that the action of the respondents is contrary to the Full Bench judgment of this Court in ***Ambica Lamp House, Rajahmundry v. Commercial Tax Officer (Int)-I Enforcement, Hyderabad and another***.

According to the petitioner, it has been carrying on business in medicines as a proprietary concern having registered as a dealer under the provisions of Andhra Pradesh General Sales Tax Act, 1957 and also Central Sales Tax Act, 1956.

It is stated that on 14-05-2004, an inspection was conducted by the officials of the respondent Department and in the course of inspection an alleged suppression of turnover to the extent of Rs.5,60,480/- was found and the Department issued notice and collected tax as well as compounding fee, exercising coercion, which they are not legally entitled to do so. It is further stated that subsequently, the Department made an assessment and in the process of assessment,
the alleged suppressed turnover was not added as the said turnover was already accounted for in the books of account, therefore the collection of tax as well as the compounding fee is illegal. But, however, in view of the completion

of the assessment, the petitioner sought to quash the order insofar as the collection of compounding fee with a direction to refund the same.

The Department filed counter affidavit disputing the claim of the petitioner. In the counter affidavit, it is specifically stated that, it is only after the inspection and collection of the tax and compounding fee, the petitioner had accounted for the suppressed turnover, therefore, the Department while making the assessment did not make any addition, as the same would amount to double taxation.

It is also stated that the petitioner was found to have suppressed the turnover even on earlier occasions. When an inspection was made on 02-07-2003, certain suppression of turnover was found, then the petitioner paid the tax payable on the said suppressed turnover. Therefore, it is contended by the learned special standing counsel for the Department that there is no merit in the petitioner's contention and but for the inspection and finding of the suppressed turnover,

the petitioner would not have disclosed the suppressed turnover in its accounts. In addition, learned counsel also contended that the petitioner has come up with the present writ petition long after the alleged collection of the compounding fee, which it had admitted before the Department by filing a letter, therefore sought to dismiss the writ petition.

Heard both sides and perused the material available on record.

Admittedly, the Department conducted inspection on 14-05-2004 and in the course of inspection certain suppressed turnover was found. Thereafter, the petitioner has come forward and filed a letter. It is also stated that the inspection took place on 14-05-2004 and the petitioner responded favourably to the notice, dated

21-05-2004, and filed a letter agreeing to pay the tax as well as the compounding fee on 24-05-2004. Now, after more than a year, the petitioner has come up with the present writ petition contending that while framing the assessment,

the assessment officer found that there was no suppression of the alleged

turnover, which was found at the time of inspection by the Department. But a perusal of the assessment order, clearly shows that the suppressed turnover found by the Department was entered in the books of account on the last day of the relevant year i.e. 31-03-2004, as was recorded in the assessment order, from which it is clear that the petitioner has admitted the suppressed turnover and included the same in the books of account. Therefore, it is not open for the petitioner to turn around and contend that the alleged suppressed turnover was not added to its total turnover. In addition, the petitioner, after ten days of the inspection, in response to the notice, filed a letter seeking to pay the tax and compounding fee and accordingly paid the same. Further, the petitioner, if really aggrieved, ought to have approached this Court immediately after collection of the above amounts but has come up after more than a year.

In the above circumstances and the stated facts and also taking into account the conduct of the petitioner with reference to the alleged turnover, we are not inclined to interfere with the present writ petition.

The Writ Petition is accordingly dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:31-10-2005.

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S. ANANDA REDDY, J

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